**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Government Appeal No. 1122 of 2001**

(Old No.1645 of 1986)

State of U.P. …Appellant

**Vs.**

Bhupal Singh Dasola s/o Sri Uttam Singh
R/o Koli (Hat), post office Didihat, Tehsil Didihat
District Pithoragarh, Postal Assistant Didihat
…..Respondent

Learned A.G.A. for the appellant/State.
Sri Manoj Tiwari, learned counsel for the respondent.

**Dated: November 13, 2007**

**Hon'ble B. C. Kandpal, J.**

This appeal has been preferred by the State against the judgment and order dated 20.2.1986 passed by Judicial Magistrate, Pithoragarh thereby acquitting the accused/respondent from the offence under Section 409 of I.P.C.

Brief facts of the case, as per prosecution case, are that during the year 1979-80 the accused was the clerk in the post office Didihat, Pithoragarh. The depositors of the are deposited Rs. 11,829.10 with the accused for depositing the amount in Government Treasury but the accused did not deposit the same and misappropriated the whole amount. Report of this alleged misappropriation was made by the Superintendent of Post Office, Pithoragarh on 10.4.1986 and a case was investigated by Investigating Officer who charged the accused under Sections 409 and 420 of I.P.C. and accordingly submitted a charge sheet against

the accused in the court under Section 409 of I.P.C. only.

The accused denied the charges levelled against him and wanted his trial. In his defence, he did not adduce any evidence. The prosecution in support of its case examined six witnesses in all and adduced the documentary evidence of the Pass-book Ext. 1 to 3 and that of 6 to 31, 32 and 33.

The trial court after hearing learned counsel for the parties and having perused the entire evidence available on record, acquitted the accused from the charges levelled against him under Section 409 of I.P.C. vide judgment and order dated 20.2.1986.

Feeling aggrieved by the aforesaid judgment and order, the appellant/State has preferred this appeal before this Court.

Heard learned A.G.A. for the State, Sri Manoj Tiwari, learned counsel for the respondent and perused the record.

The learned Judicial Magistrate has recorded a categorical finding that PWs 1 to 5 examined in the case, have not narrated about the misappropriation of money by the accused. The case of the prosecution is that the accused has not deposited the money with the Government Treasury, whereas PWs 1 to 4 in their statements deposed that the money sent by them to deposit in the post office, has been entered in the pass-books, therefore, the prosecution witnesses have not alleged against the accused about the misappropriation of the money. As such, the learned Magistrate had no option but

to acquit the accused in the absence of any reliable cogent evidence adduced by the prosecution in the case.

I do not find any illegality and impropriety in the finding recorded by the learned Magistrate while acquitting the accused/respondent from the charges levelled against him.

I find so substance in the appeal filed by the State and the same is liable to be dismissed.

The appeal is accordingly dismissed. The impugned judgment and order dated 20.2.1986 passed by Judicial Magistrate, Pithoragarh, is hereby confirmed.

**(B.C. Kandpal, J.)**

SP